

Policy Title:	PUBLIC INTEREST DISCLOSURE MANAGEMENT
Policy Subject:	Governance
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Directorate:	Organisational Services
Department:	Governance & Customer Service
Section:	Governance & Planning
Responsible Officer:	Executive Manager Governance & Customer Service
Authorised by:	Chief Executive Officer
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Risk Assessment	Low

1. OBJECTIVE

As a public sector entity, Council is subject to the requirements of the *Public Interest Disclosure Act 2010* and all Council Employees and Elected Members are public officers for the purposes of the legislation.

The Fraser Coast Regional Council has obligations under this Act in relation to the receiving of public interest disclosures and ensuring that persons making such disclosures are protected from reprisals.

The objective of this policy is to comply with the *Public Interest Disclosure Act 2010* by providing a consistent and professional response to any public interest disclosures (PID's) made to Council in accordance with the Act.

In addition, the policy is intended to ensure all Elected Members and Council employees are aware of their responsibilities by reporting serious misconduct and other important matters adversely affecting the public interest or Council operations.

2. POLICY STATEMENT

The Chief Executive Officer of Fraser Coast Regional Council intends to comply with section 28 of the Public Interest Disclosure Act 2010 by establishing reasonable procedures to ensure that:

- Public officers of the entity who make public interest disclosures are given appropriate support; and
- Public interest disclosures made to the entity are properly assessed and, when appropriate, properly investigated and dealt with; and

Appropriate action is taken in relation to any wrongdoing that is the subject of a public interest disclosure made to the entity; and

- A management program for public interest disclosures made to the entity, consistent with any standard made under section 60 of the Act, is developed and implemented; and
- Public officers of the entity are offered protection from reprisals by the entity or other public officers of the entity.

The Chief Executive Officer must ensure that the procedures are published, as soon as practicable after the procedures are made, on a website that is maintained by the public sector entity and readily accessible to the public.

3. PHILOSOPHY

This policy provides Councillors and Officers protection in accordance with the *Public Interest Disclosure Act 2010*, by protecting persons who disclose unlawful, negligent or improper public sector conduct, or conduct which endangers public health or safety or the environment.

Council will support individuals making a PID which promotes the public interest and those reporting occurrences of wrongdoing internal to Council. Overall, the philosophy is to encourage all officers to be accountable for their actions and to maintain high standards of professional conduct and service.

It is important for Council to establish an environment in which the reporting of negligent or improper behaviour is encouraged and to demonstrate a commitment to rigorous risk management.

4. AUTHORITIES AND RESPONSIBILITIES

- Council expects its elected members and staff to maintain a high standard of ethical conduct in all activities, in particular with respect to resources, information and authority. The community rightly expects the Council to conduct its business in a fair and honest manner.
- Council is responsible for ensuring that appropriate measures are in place to support persons who disclose unlawful, negligent or improper public sector conduct or danger to public health or safety or the environment.
- The Chief Executive Officer or Mayor are the responsible officers for receiving disclosures and acting on them. The Chief Executive Officer has primary responsibility for receiving disclosures. Where a disclosure may involve the actions of the Chief Executive Officer, these should be referred to the Mayor.
- Directors and Executive Managers are responsible for the implementation and support of this policy and procedures within their areas of responsibility.
- Employees are responsible for the detection and reporting of fraud or wrongdoing within their areas of responsibility.
- Staff should be familiar with and act in accordance with the Fraser Coast Regional Council Code of Conduct and elected members to comply with the Code of Conduct for Councillors

5. APPLICATION/SCOPE

A Public Interest Disclosure is defined by reference to:

- the person who makes the disclosure;

- the type of information disclosed; and
- the entity to which the disclosure is made.

The Public Interest Disclosure Act 2010 distinguishes between disclosures made by a public officer and those made by any person.

Disclosure by Any Person

Section 12 of the Act applies if a person (whether or not the person is a public officer) has information about:

- A substantial and specific danger to the health or safety of a person with a disability; or
- A substantial and specific danger to the environment (as set out in the PID Act); or
- The conduct of another person that could, if proved, be a reprisal.

Disclosure by a Public Officer

Section 13 of the Act applies if a person who is a public officer has information about the conduct of another person that could, if proved, be:

- Official misconduct;
- Maladministration that adversely affects a person's interests in a substantial and specific way;
- A substantial misuse of public resources (other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure);
- A substantial and specific danger to public health or safety;
- A substantial and specific danger to the environment.

6. APPROPRIATE DISCLOSURES

An appropriate disclosure is where:

- The discloser honestly believes on reasonable grounds that the information tends to show the conduct or danger; or
- The information tends to show the conduct or danger, regardless of the discloser's belief.

Information that 'tends to show' wrongdoing or danger must be more than a mere suspicion, there must be information that indicates or supports a view that the wrongdoing or danger has or will occur.

7. HOW TO MAKE A DISCLOSURE

A person may make a disclosure in any way, including anonymously. If a disclosure is made anonymously, it is difficult to protect the person making the disclosure from any retributive action or reprisal. As such, anonymous disclosures, although permitted, are discouraged.

Disclosures should be made directly to the Chief Executive Officer, however a Council employee may make a public interest disclosure to their Supervisor, Executive Manager, Director, Chief Executive Officer or in need the Mayor being appropriate entities. In the case of a matter relating to alleged official misconduct, disclosures can be made directly to the Crime and Corruption Commission.

When a disclosure is made to a supervisor, the supervisor must communicate the disclosure immediately to the Chief Executive Officer. The Chief Executive Officer has primary responsibility for

receiving disclosures. Where a disclosure may involve the actions of the Chief Executive Officer, these should be referred to the Mayor. Unless specifically reported as a “public interest disclosure”, the Chief Executive Officer or Mayor will assess whether a disclosure or reported matter is a “public interest disclosure” within the meaning of the Act. The Chief Executive Officer or Mayor may, where reasonable, communicate this determination to the discloser.

A disclosure should be in writing, although it may be made orally. If an appropriate entity receives a public interest disclosure, they should encourage the discloser to put the information in writing. If the discloser does not, the supervisor must promptly make a written note recording the precise matters raised and this should be referred to the Chief Executive Officer or to the Mayor.

To intentionally make a false disclosure is an offence under section 66 of the Act.

8. A PID TO A JOURNALIST

Under the PID Act, a discloser may make a PID to a journalist if they have already made essentially the same disclosure to a public sector entity that is a ‘proper authority’; and:

- The entity has decided not to investigate or deal with the disclosure, or;
- The entity investigated the disclosure but did not recommend taking any action, or;
- The discloser was not notified within six months of making the disclosure whether or not the disclosure was to be investigated or dealt with.

9. SUPPORT AND PROTECTION

Council is responsible under the Act for preventing any disclosures from reprisals and bullying. Council will initiate and coordinate action to support disclosers, particularly those who are suffering detriment as a result. Under section 36 of the Public Interest Disclosure Act 2010 a person is not liable civilly, criminally or under an administrative process for making a disclosure. An employee cannot be dismissed on the basis of making a disclosure or intending to make a disclosure in accordance with the Act.

Council will ensure that all people involved in an investigation of a disclosure, either as a Discloser or subject, will be offered an appropriate level of support and case management. Action will be taken to ensure where possible that people’s identities and the details of the disclosure remain confidential.

10. CONFIDENTIALITY

Maintaining confidentiality is very important in the handling of a disclosure. Confidentiality not only protects the discloser against reprisals, but any other people affected by the disclosure. Confidential information includes:

- the fact a disclosure has been made;
- any information that may identify the discloser or any person who may be the subject of a disclosure;
- the actual information that has been disclosed;
- information relating to the disclosure that, if known, may cause detriment.

In protecting disclosers’ confidentiality, Council will ensure that the details of the disclosure, investigation and related decisions will be kept secure.

While every attempt to protect confidentiality will be made, there will be occasions when revealing the identity of the discloser is necessary. These include:

- providing information to a referral or oversight agency;
- responding to a court order or legal directive (e.g. subpoena, notice to produce, direction by a parliamentary committee);
- court proceedings.

11. THE ASSESSMENT AND INVESTIGATION PROCESS

The assessment about whether the reported conduct constitutes a public interest disclosure and the determination of appropriate action to be taken will be determined on a case by case basis.

If a disclosure is considered a public interest disclosure, the Chief Executive Officer or Mayor may develop an investigation and protection plan (in consultation with the discloser) in order to ensure the information is investigated and the discloser is protected from any retributive action. The Chief Executive Officer must be immediately advised upon receipt of a public interest disclosure. The plan will address whether immediate action needs to be taken to halt the conduct or remedy the danger to which the public interest disclosure relates and will recommend action to be taken to avoid reprisals against the disclosure.

The Chief Executive Officer or Mayor may consult with other relevant Council officers (while maintaining the confidentiality of the person making the disclosure). Council may choose to appoint an internal or external investigator, as appropriate. However, the disclosure will not be referred outside Council without first consulting the discloser.

Any person (whether internal or external to Council) involved in the investigation will be fully briefed on their obligations under the Act and the consequences of any breach of the obligations. The disclosure may also request information about the progress of any investigation and any action taken on the disclosure. Council will provide such information where it is reasonable to do so.

Once a disclosure has been investigated, a report of the investigation will be delivered to the Chief Executive Officer or the Mayor. The report may contain recommendations for further action. Where reasonable, the report (or an edited extract of the report) will be forwarded to the discloser. The Chief Executive Officer or the Mayor will decide what further action (if any) will be taken on the disclosure.

In some cases the Chief Executive Officer or the Mayor may be bound to inform other agencies about the contents of a disclosure, such as the Crime and Corruption Commission who has investigative powers for matters relating to official misconduct.

If a report of official misconduct is received, the Chief Executive Officer is required to report the matter to the Crime and Corruption Commission for further advice on actions to be taken.

In other cases, the Chief Executive Officer or Mayor may be of the view that it is appropriate for other agency staff to be informed. In all cases, the confidentiality of the identity of the person making the disclosure will be protected to the greatest extent permitted by law and the Chief Executive Officer or the Mayor will (where practical) consult with the discloser before informing any other agency.

In some cases Council may decide not take any action (under s30 of the Act) or Council's action may be to refer the disclosure to another agency (under s31 of the Act). Council may decide not to investigate or deal with a public interest disclosure if:

- the substance of the disclosure has already been investigated or dealt with by another appropriate process; or
- Council reasonably considers that the disclosure should be dealt with by another appropriate process; or
- the age of the information the subject of the disclosure makes it impracticable to investigate; or
- Council reasonably considers that the disclosure is too trivial to warrant investigation and that dealing with the disclosure would substantially and unreasonably divert the use of Council's resources; or
- another entity that has jurisdiction to investigate the disclosure has notified Council that investigation of the disclosure is not warranted.
- If Council decides not to investigate or deal with a public interest disclosure, Council must give written reasons for its decision to the person making the disclosure.

12. REPRISAL

Council is committed to ensuring that no adverse action, including reprisals, occurs as a result of a disclosure. Under section 40 of the Act, *"A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that:*

- (a) the other person or someone else has made, or intends to make, a public interest disclosure; or*
- (b) the other person or someone else is, has been, or intends to be, involved in a proceeding under the Act against any person."*

An act of reprisal by a Councillor or employee is an offence under section 40 of the Public Interest Disclosure Act 2010 and may result in criminal prosecution and disciplinary action including dismissal with respect to an employee.

Disclosers should not suffer any form of detrimental action as a result of making a disclosure, including:

- unfair treatment;
- harassment;
- intimidation;
- victimisation;
- unlawful discrimination.

Where Council establishes that reprisal action is occurring, all possible steps to stop the activity and protect the discloser will be taken. The nature of the action taken will be dependent upon the circumstances and seriousness of the reprisals that are likely to be suffered.

13. RECORD OF DISCLOSURE

Although public interest disclosures are required to be kept confidential, Council has some reporting and record-keeping obligations imposed on it, both under the Public Interest Act 2010 and other Acts that prevail over this obligation of confidentiality.

The Chief Executive Officer or the Mayor must keep a record of all public interest disclosures or purported public interest disclosures received by Council. These records will be kept in the central records system as limited access files and will be strictly confidential.

The Chief Executive Officer is responsible for fulfilling the Council's reporting obligations under the Act, when a public interest disclosure is made, the CEO must keep a proper record of the disclosure, including:

- The name of the person making the disclosure, if known; and
- The information disclosed; and
- Any action taken on the disclosure; and
- Any other information required under a standard made under section 60 of the Act.

Likewise, when a public interest disclosure is referred under section 31 or 34 of the Act, the CEO must keep a proper record of the disclosure, including:

- The name of the person making the disclosure, if known; and
- The information disclosed; and
- The name of the public sector entity, or member of the Legislative Assembly, that referred the disclosure; and
- Any action taken on the disclosure; and
- Any other information required under a standard made under section 60 of the Act.

The Ombudsman, as the oversight agency, may make, under section 60 of the Act, a standard that requires the Chief Executive Officer of a public sector entity to give to the oversight agency all or any of the information mentioned above. The standard may provide for the way in which and the period within which the information is to be given.

14. DISCLOSING FALSE OR MISLEADING INFORMATION

Disclosures are not to be made if the information is known to be malicious, false, misleading or vexatious. It is an offence, to which significant penalties apply, if a person makes a statement intending that it be acted upon as a PID and the person intentionally provides false or misleading information.

15. RELATED LEGISLATION

- Local Government Act 2009
- Crime and Corruption Act 2001
- Public Interest Disclosure Act 2010

16. RELATED DOCUMENTS (LOCAL LAWS, POLICIES, DELEGATIONS, ETC)

- Fraser Coast Regional Council Code of Conduct
- Code of Conduct for Councillors

17. DEFINITIONS

Public Interest Disclosure

A Public Interest Disclosure (PID) is a disclosure, in the public interest, of information about wrongdoing in the public sector. For an allegation, to be considered a PID and attract the protections under the Public Interest Disclosure Act 2010, it must be:

- Public interest information about substantial and specific wrongdoing or danger;
- An appropriate disclosure;

- Made to a proper authority.

Reprisal

Occurs when any person causes or attempts or conspires to cause detriment to another person because or in the belief that a person has made or may make a PID. A public officer who is found to have taken a reprisal commits a criminal offence.

Public officer

A public officer of a public sector entity is an employee, member or officer of the entity.

Proper Authority

Proper authorities are persons and organisations authorised under the PID Act to receive public interest disclosures. Examples of proper authorities include:

- The public sector organisation that is the subject of the PID. A public sector entity is a proper authority if the disclosure is about the conduct of that entity or its employees.
- An agency the discloser believes has authority to investigate the matter. For example; the Crime and Corruption Commission is a proper authority for disclosures about official misconduct.
- The Chief Judicial Officer of a court or tribunal when the report is about suspected official misconduct or reprisal by judicial officers.
- A Member of the Legislative Assembly (an MP)

Administrative Action

Means any action about a matter of administration, including, for example a decision and an act; a failure to make a decision or do an act, including a failure to provide a written statement of reasons for a decision; the formulation of a proposal or intention; the making of a recommendation, including a recommendation made to a Minister and an action taken because of a recommendation made to a Minister.

Corruption

Is defined by the Crime and Corruption Commission as behaviour that may involve fraud, theft, misuse of position or authority or other acts that are unacceptable to an organisation and which may cause loss to the organisation, its clients or the general community. It may also include such elements as breaches of trust and confidentiality. The behaviour need not necessarily be criminal.

Detriment

Includes personal injury or prejudice to safety; property damage or loss; intimidation or harassment; adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; financial loss and damage to reputation, including, for example, personal, professional or business reputation.

Maladministration

Is administrative action that was taken contrary to law; was unreasonable, unjust, oppressive, or improperly discriminatory; was in accordance with a rule of law or a provision of an Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory in the particular circumstances; was taken for an improper purpose or on irrelevant grounds or having regard to

irrelevant considerations; was an action for which reasons should have been given, but were not given; was based wholly or partly on a mistake of law or fact; or was wrong.

Official Misconduct

Is defined as any misconduct connected with the performance of an officer's duties that is dishonest or lacks impartiality, involves a breach of trust, or is a misuse of officially obtained information. To be considered official misconduct, the conduct must constitute a criminal offence or be serious enough to justify dismissal.

Oversight Agency

The Ombudsman is the oversight agency for the PID Act. This means the Ombudsman:

- **monitors the management of PIDs** by checking compliance with the PID Act, collecting and publishing statistics about PIDs, and identifying trends in relation to PIDs;
- **reviews the way public sector entities deal with PIDs** by reviewing PIDs management generally or by examining particular public interest disclosures;
- **performs an education and advisory role** including promoting PIDs awareness, providing advice about PIDs, and providing PID education and training programs.

Public Funds

Are funds available to, or under the control of, a public sector entity including, for example, public moneys within the meaning of the *Financial Accountability Act 2009*.